

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ABBVIE INC., et al.,

Defendants.

Case Number: 2:14-CV-5151-HB

**PLAINTIFF FEDERAL TRADE COMMISSION'S
SUPPLEMENTAL PRE-TRIAL MEMORANDUM**

Pursuant to paragraph 7 of the Court's Sixth Scheduling Order (Dkt. 310), Plaintiff Federal Trade Commission ("FTC") submits the following Supplemental Pre-trial Memorandum. The FTC incorporates by reference its original Pre-trial Memorandum filed with the Court on December 6, 2017. (Dkt. 319).

VIII. Amended Schedule of Exhibits

An amended schedule of exhibits to be offered into evidence at trial is attached hereto as Appendix C (Amended). The FTC submits this amended schedule to correct: (1) an error in the numbering of the FTC's exhibits that inadvertently identified two documents as PLX 157 and (2) several minor typographical errors and/or unclear descriptions in the entries for PLX016, PLX026, PLX039, PLX040, PLX046, PLX079, PLX095, PLX106, PLX109, PLX259, PLX293, and PLX294. This amended schedule does not contain any substantive changes or add any new exhibits to the schedule that the FTC filed with the Court with its Pre-trial Memorandum on December 6, 2017.

IX. Deposition Counter-Designations

The FTC's counter-designations to Defendants' deposition designations are attached as Appendix D.

This Court's Sixth Scheduling Order requires that the parties' pretrial memoranda "include the parties' designations of deposition testimony to be offered at trial." (Dkt. 310). Defendants submitted designations of deposition testimony for three witnesses with their December 15, 2017 Pre-trial Memorandum: Maureen Cavanaugh, Andrew Solomon, and Dr. Francis Hayes. Defendants' pre-trial memorandum then purports to "reserve the right to offer deposition testimony" for any other witness on Defendants' witness list who is unavailable. (*See* Dkt. 322, Appendix A-1 and A-2). However, Defendants failed to submit designations of the deposition testimony for any other designated witness with their pre-trial memorandum, the vast majority of whom are under Defendants' control. Given Defendants' failure to adhere to the Court's deadline for exchanging and submitting such designations (Dkt. 310, ¶ 6), Defendants should be precluded from offering at trial any other witness through videotaped deposition testimony or deposition transcripts besides Ms. Cavanaugh, Mr. Solomon, and Dr. Hayes (if they are unavailable). Allowing Defendants to effectively grant themselves a waiver or extension of the Court's deadline and affirmatively introduce deposition testimony without providing designations in accordance with the Sixth Scheduling Order unduly prejudices the FTC in its trial planning and deprives the FTC of the opportunity to review the designations, prepare any objections, and provide appropriate counter-designations.

X. Reservation of Rights

The FTC reserves the right to offer into evidence at trial any document identified on Defendants' Schedule of Exhibits filed with Defendants' Pretrial Memorandum on December 15, 2017, any exhibit introduced by Defendants at trial, any exhibit necessary for rebuttal, and any documents produced by Defendants after the filing of this Supplemental Pre-trial Memorandum. In

addition, the FTC reserves all objections to any document included on Defendants' Schedule of Exhibits filed on December 15, 2017.

The FTC likewise reserves its right to object to any individual included on Defendants' trial witness list who was not previously identified pursuant to Rule 26(a)(1) as a person that Defendants may use to support their defenses or who was not made available for deposition during discovery by Defendants. The FTC plans to file a motion to preclude the testimony of certain witnesses included on Defendants' trial witness list on this basis.

Dated: January 5, 2018

Respectfully submitted,

/s/ Patricia M. McDermott
Patricia M. McDermott

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2569
pmcdermott@ftc.gov

Appendix C (Amended)

Filed Under Seal

Appendix D

FTC v. AbbVie, E.D. Pa. No. 14-cv-5151-HB
 Defendants' Deposition Designations with FTC Counter-Designations
Maureen Cavanaugh (9/13/2016)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
10	14	10	20	
11	3	11	6	
11	8	11	10	
11	12	13	2	
13	4	13	6	
13	19	15	10	
15	12	15	14	
15	17	16	7	
16	9	16	16	
16	23	17	10	
17	14	17	25	
18	3	18	5	18:6-18:7
18	8	18	8	
18	10	18	13	18:14-18:15
18	16	18	16	
18	18	19	16	19:17-19:18
19	19	19	25	
20	3	20	7	
21	7	21	13	
21	17	21	23	
21	25	24	21	
25	2	25	11	
25	13	27	14	
27	20	27	22	
27	25	29	6	
29	23	31	13	
31	17	31	25	
32	6	32	8	
32	11	32	19	
32	23	33	2	
33	5	33	20	
33	21	34	13	
34	18	34	20	
34	24	36	9	
36	16	36	18	
37	21	38	20	
39	7	39	18	39:19-40:5
40	6	40	12	
40	23	41	7	
41	9	41	24	
42	5	42	19	

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Maureen Cavanaugh (9/13/2016) (continued)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
44	11	44	21	44:22-44:23
44	24	44	25	
45	3	45	15	45:16-45:17
45	18	45	21	
45	23	46	4	46:5-46:6
46	7	46	18	
46	20	47	18	47:19-47:20
47	21	48	6	
48	8	48	20	48:21-48:22
48	23	50	6	
50	8	51	5	
51	7	51	10	
51	18	52	19	52:20
52	21	53	4	
53	20	54	16	
55	8	55	11	
55	15	55	17	
55	20	59	10	
61	3	62	21	
63	10	64	6	
64	10	64	12	
64	15	66	17	
66	24	68	12	
68	15	68	17	
68	20	69	19	69:20-69:21
69	21	70	7	
70	9	70	13	70:14-70:15
70	16	71	4	
71	6	71	13	71:14-71:15
71	16	71	17	
71	19	72	9	
72	20	73	19	73:20-73:21
73	22	74	10	
74	12	76	13	76:14-76:15
76	16	76	21	
76	23	77	18	77:19-77:20
77	21	78	6	
78	8	80	22	80:23-80:24
80	25	81	3	
81	5	82	4	82:5-82:6
82	7	82	9	

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Maureen Cavanaugh (9/13/2016) (continued)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
82	11	83	11	
83	15	84	23	84:24-84:25
85	2	85	3	
85	7	85	9	
85	12	87	21	87:22-87:23; 87:25-88:3
88	5	88	15	88:16-89:4
89	5	89	9	89:10-89:11
89	12	89	19	
89	21	91	8	
100	5	100	11	
100	13	100	20	
117	18	117	23	
119	4	119	7	
176	5	176	20	
177	11	177	13	
178	8	178	12	
178	15	179	12	
179	14	179	19	
179	21	180	5	180:7-180:10; 180:12
180	14	180	16	
180	19	181	11	
288	10	288	15	288:16-288:17
288	18	289	18	
289	20	290	11	
293	20	294	11	294:12-294:13
294	14	294	14	
298	21	299	5	299:6-299:7
299	8	299	14	
299	16	299	16	299:17-299:18
299	19	300	2	
300	4	300	11	
300	20	300	25	
305	2	305	6	305:7-305:8
305	9	305	22	
305	24	305	25	306:2-306:3
306	4	306	5	
306	7	306	9	306:10-306:11
306	12	306	13	
306	15	306	20	306:21-306:22
306	23	306	24	307:3-5; 307:8-20
310	20	310	23	310:24-310:25

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Defendants' Deposition Designations with FTC Counter-Designations
Maureen Cavanaugh (9/13/2016) (continued)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
311	2	311	8	
317	6	317	8	317:9-317:10
317	11	317	14	
319	18	319	20	
319	22	319	24	
320	3	320	20	320:21-320:22
320	24	321	6	321:7-321:8
321	10	321	14	321:15-321:16
321	17	321	19	
321	21	321	25	322:2-322:3
322	4	322	11	

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Dr. Frances Hayes (5/9/2017)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
8	2	8	6	
8	20	9	1	
9	15	9	18	9:19-9:20
9	21	9	23	
9	25	10	4	
12	5	13	15	
13	19	14	5	14:6-14:7
14	9	14	13	14:14-14:15
14	16	14	20	
14	22	14	24	
15	3	15	6	15:7-15:8
15	9	15	13	
15	15	17	20 ¹	17:21-17:22
17	23	18	9	18:10-18:11
18	13	18	17	18:18-18:19
18	20	18	20	
18	22	20	15	20:16-20:17
20	18	21	10	
21	12	21	19	21:20-21:21
21	22	23	13	
23	17	24	12	24:13-24:14
24	15	24	20	
24	22	25	6	25:7-25:8
25	9	25	10	
25	12	25	25	26:1-26:3; 26:7-26:9
26	10	27	20	
27	22	28	17	
29	3	29	15	
30	7	30	11	29:21-30:3; 30:12
30	13	30	13	
30	15	30	21	
30	23	32	3	32:4-32:5
32	6	32	8	
32	10	35	6	
35	9	38	5	38:6-38:7
38	8	38	9	
38	11	38	19	38:20-38:21
38	22	39	1	
39	3	41	2	41:3-41:4
41	5	43	5	
43	7	43	12	

¹ This designation reflects the correction of a typographical error provided by Defendants on January 2, 2018. (Email from A. Lawton to P. Taylor dated Jan. 2, 2018).

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Dr. Frances Hayes (5/9/2017) (continued)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
43	14	44	15	44:16-44:17
44	18	45	3	
45	5	45	9	45:10
45	11	45	16	
45	18	45	20	45:21
45	22	45	22	
45	24	46	3	46:4-46:5
46	6	46	7	
46	9	47	10	47:11-48:9
48	10	48	18	48:19-48:20
48	21	48	23	
48	25	49	14	
51	1	52	2	52:3-52:4
52	5	52	8	
52	10	52	15	52:16-52:17
52	19	54	7	54:8-54:9
54	10	54	11	54:12-54:13
54	14	56	11	56:12-56:17
56	19	57	21	57:22-57:23
57	24	58	5	58:6-58:12
58	14	58	24	58:25-59:1
59	2	59	13	
59	15	59	18	59:19-59:20
59	21	59	21	
59	23	60	7	60:8-60:9
60	10	60	18	119:25-120:8
60	20	61	9	61:10-61:11
61	12	61	22	
61	24	62	1	62:2
62	3	62	3	119:25-120:8
62	5	62	7	62:8
62	9	62	12	
62	14	63	14	63:15-63:21
63	23	64	25	65:1-65:2
65	3	65	11	
65	13	66	4	66:5-66:6
66	7	66	10	
66	12	66	18	66:19-66:20
66	21	66	25	
67	2	67	25	68:1-68:2
68	3	68	6	
68	8	68	20	68:21-68:22

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Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
68	23	69	6	124:4-124:21
69	8	69	15	
69	18	69	19	69:20-69:21
69	22	70	1	
70	4	70	9	
70	11	70	17	70:18-70:19
70	20	71	1	
72	7	73	3	71:3-71:8; 71:11-71:18; 71:20-72:6
76	14	76	20	
76	22	78	15	
78	17	80	5	80:6-80:7
80	8	80	8	
80	11	80	16	
80	18	82	11	
82	18	84	10	
85	5	85	7	
85	19	88	4	88:6-88:11
88	12	89	24	
90	13	90	17	90:18-90:19
90	20	91	9	
91	25	92	13	92:14-92:20
92	21	93	1	93:2-93:3
93	4	93	7	
93	9	93	13	93:14-93:15
93	16	93	16	
97	1	97	4	97:5-97:6
97	7	97	20	
97	22	97	25	
98	3	98	18	
100	18	100	23	
101	13	101	18	
101	22	103	14	103:15-104:19
104	20	105	5	105:7-105:13
105	14	105	19	
105	22	106	4	
106	8	108	12	
109	8	110	4	
110	6	110	23	110:24-110:25
111	1	111	20	
111	23	112	1	
112	5	112	18	112:19-112:20
112	21	113	14	

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Defendants' Deposition Designations with FTC Counter-Designations
Dr. Frances Hayes (5/9/2017) (continued)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
113	16	114	4	114:5-114:6
114	7	114	12	
114	14	114	21	
114	24	114	24	
116	2	116	18	
116	21	116	22	
117	1	117	3	117:5-117:18
117	19	118	22	118:23-118:24
118	25	118	25	
125	4	126	21	126:22-127:6; 121:5-124:21
127	7	127	11	127:12-127:13
127	15	128	14	

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 Defendants' Deposition Designations with FTC Counter-Designations
Andrew Solomon (11/04/2016)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
10	5	10	15	
10	21	12	3	
12	19	13	21	
23	3	23	5	
35	12	35	19	
45	2	45	8	
68	20	68	21	
68	23	70	7	
74	8	75	11	
91	10	91	25	
92	7	93	1	
93	5	93	7	
94	1	95	13	
95	18	97	4	
98	6	98	12	
101	5	101	6	
101	8	101	18	
102	5	103	2	
106	21	107	15	
109	20	109	22	
109	25	110	9	
110	11	110	12	
110	15	111	4	
111	6	111	18	
113	11	113	15	
113	18	114	14	
116	6	118	8	
118	10	118	19	
118	21	119	6	
121	5	122	4	
123	10	127	13	
127	15	128	5	128:6
128	7	130	24	
131	5	132	4	
132	23	136	19	
136	21	140	14	
141	19	144	18	
145	15	148	2	148:3
148	4	148	4	195:21-196:2; 196:5-196:20
149	23	150	12	
150	20	150	23	150:24

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 Defendants' Deposition Designations with FTC Counter-Designations
Andrew Solomon (11/04/2016) (continued)

Start Page	Start Line	End Page	End Line	FTC's Counter-Designations
150	25	151	2	
151	4	152	24	152:25
153	1	153	1	
153	3	159	10	
159	13	159	16	159:17-160:1
161	2	161	8	160:3-160:15
161	20	162	3	
162	7	166	7	
166	9	168	6	
168	8	168	22	
168	25	170	16	
170	18	171	13	191:4-191:19; 191:21-192:9; 192:14-192:21
172	2	172	20	
179	23	181	2	
181	19	182	8	
182	12	184	22	
185	8	185	9	
185	11	185	19	
185	22	185	23	
186	9	187	6	
187	8	188	18	
188	20	189	16	189:17
189	18	189	22	
190	5	190	23	
197	17	198	7	196:21-197:16
198	9	198	13	196:21-197:16
198	22	199	15	
202	7	202	11	202:12
202	13	202	18	
202	20	202	25	
203	10	204	12	

Certificate of Service

I hereby certify that on January 5, 2018, I caused Plaintiff Federal Trade Commission's Supplemental Pre-trial Memorandum to be filed with the United States District Court for the Eastern District of Pennsylvania using the ECF system. I certify that I also caused this filing to be served on all counsel of record via electronic mail.

/s/ Patricia M. McDermott
Patricia M. McDermott